ST 96-21
Tax Type: SALES TAX
Issue: Exemption From Tax (Charitable Or Other Exempt Type)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

TAXPAYER,	)	CLAIM FOR EXEMPTION
	)	
Taxpayer,	)	Case No.
v.	)	
THE DEPARTMENT OF REVENUE	)	John E. White,
OF THE STATE OF ILLINOIS	)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearance: ATTORNEY, appeared for taxpayer.

Synopsis:

On November 29, 1994, TAXPAYER ("TAXPAYER" or "taxpayer") wrote to the Illinois Department of Revenue ("Department") to request that the Department recognize it as an exclusively charitable organization, and issue it an exemption identification number, so that it could purchase tangible personal property at retail without being required to pay use tax on such purchases. On December 12, 1994, the Department denied taxpayer's application. Taxpayer protested the Department's denial, and requested a hearing.

The sole issue to be determined at hearing was whether taxpayer was entitled to an exemption from state use tax as an exclusively charitable organization. At hearing, which held at the Department's Office of Administrative Hearings on August 17, 1995, taxpayer presented documentary evidence consisting of its corporate books and records, and the testimony of two of its directors, and its comptroller. I have considered the evidence adduced at that hearing, and I am including in this recommendation specific findings of fact and conclusions of law. I recommend that the issue be resolved in favor of taxpayer.

Findings of Fact:

1. Taxpayer is an Illinois not-for-profit corporation whose corporate purposes are as follows:

The Corporation is organized and operated exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue code of 1954, as amended, or corresponding provision of any subsequent Federal tax laws.

In furtherance of its charitable goals, and limited by them, the Corporation shall assist in the planning and development of projects, undertakings, studies and other activities in the south suburbs of Chicago, Illinois, for the purpose of combatting community deterioration, economic and otherwise, or securing decent, safe, sanitary and affordable housing and other facilities conducive to the progress and general welfare of the community, and of improving employment opportunities for unemployed and underemployed residents of these communities, and to these ends:

(a) to promote and improve housing conditions in these south suburban Chicago communities through the acquisition, rehabilitation, construction, financing and/or sale of housing and land; through buyer education programs and comprehensive housing counseling programs including but not limited to default and pre-purchase counseling; and through other initiatives, designed to expand and enhance housing opportunities for low and moderate income community residents; and

(b) to initiate or engage in other community improvement programs designed to contribute to better housing conditions and other facilities, the economic revitalization of these communities, and the general well-being of low and moderate income residents in these communities; and

(c) to encourage participation of community residents, local business owners and managers, and representatives of other neighborhood institutions in housing and community improvement programs sponsored by the Corporation and by the Illinois not-for-profit CONFERENCE to support such improvement programs, and disseminate information to the general public concerning the objectives and purposes of the Corporation; and

(d) to carry on any activity and to deal with and expend any such property or income therefrom for any of the aforesaid purposes without limitation, except such limitation, as may be contained in the instrument under which such property is received, the Articles of Incorporation, the By-laws of the Corporation, or any other limitation prescribed by law, provided that such activity shall be such as is not permitted by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or any corresponding provision of subsequent Federal tax laws.

It is intended that the Corporation be organized and operate to carry out the community improvement activities of the Illinois not-for-profit CONFERENCE corporation in a manner that improves the designated communities for low and moderate income people, fosters community economic revitalization and racial harmony, and enables community residents, business people and institution officials to assume the kind of partnership and leadership roles in their own communities that is recognized as necessary to rebuild and stabilize these communities. To these ends it is intended, and by the Corporation's By-laws organized, that the Corporation and the CONFERENCE shall maintain a close relationship, such that the Corporation remains accountable for its activities directly to the communities in which it is operating.

Taxpayer Group Exhibit ("Ex.") No. 1, item 1.4.[1]

2. Taxpayer's By-Laws provide that "the corporation shall keep . . . correct and complete books and records of account of the activities and transactions of the Corporation . . . " (Taxpayer Group Ex. No. 1, item 1.6), and taxpayer's financial books and records were introduced into evidence at hearing. *See* Taxpayer Ex. Nos. 3-10.

3. Taxpayer received most of the funding for its programs through grants from organizations identified in Taxpayer Ex. No. 8.

4. Taxpayer has no capital stock structure. Taxpayer Group Ex. No. 1, items 1.2 & 1.6.

5. Taxpayer issues no stock, and has no stockholders. *Id.*

6. Taxpayer pays wages to its employees (*see, e.g.*, Taxpayer Ex. No. at 3 (staffing expenses detailed)), but no officer or director of taxpayer is paid for any duties performed in those capacities. Taxpayer Group Ex. No. 1, item 1.4 (7/94 Articles of Amendment, Art. 5); item 1.6 (By-Laws, Art. XV).

7. Taxpayer was formed by the COUNCIL ("COUNCIL"), a consortium of approximately thirty churches in the south suburbs of Chicago. Taxpayer Ex. No. 1 (By-Laws, Art. III, § 3.1 provides that the member churches of the COUNCIL shall be members of taxpayer); Taxpayer Ex. No. 2 (names the COUNCIL's member churches, and the members of its business advisory committee); Tr. pp. 6-10 (testimony of taxpayer's President of the Board of Directors, REVEREND).

---

[1]. At hearing, taxpayer's original letter to the Department, and the attachments thereto, were identified as Taxpayer Group Ex. No. 1, and were admitted into evidence. Due to the bulk of that exhibit, and in order to keep the record clear, I have separately identified the sections of that exhibit as set forth below:

1.1: 11/29/94 letter from taxpayer to Department (4 pp.).
1.2: 5/74 Illinois Secretary of State ("ISOS") Certificate and Articles of Incorporation for COMMISSION ("COMMISSION") (3 pp.).
1.3: 7/89 ISOS Certificate and Articles of Amendment for COMMISSION (4 pp.).
1.4: 11/89 ISOS Certificate and Articles of Amendment changing COMMISSION's name to TAXPAYER (5 pp.).
1.5: 7/94 Articles of Amendment for TAXPAYER (1 p.).
1.6: Corporate By-Laws (18 pp.).
1.7: 5/23/90 advisory letter from IRS to taxpayer re: taxpayer's 501(c)(3) status (1 p.).
1.8. Copies of The TAXPAYER News newsletters, vol. 1 issues 1 & 2, vol. 2, issues 1 & 2.
1.9: List of taxpayer's Board of Directors (2 pp.).
1.10: Flyer re: taxpayer's Home Buyers Education and Contractors Training Laboratory (1 p.).
1.11: Taxpayer's audited financial statements for year ending 12/31/93 (16 pp.).
1.12: 12/12/94 Denial (1 p.).

8. Taxpayer's primary activities consist of developing and carrying out programs designed to help low to moderate income individuals become homeowners. Tr. pp. 12-16 (REVEREND).

9. One of the programs taxpayer conducts is the COUNCIL - Home Ownership Program ("COUNCIL"). Tr. pp. 12-16 (REVEREND), p. 22 (testimony of taxpayer's comptroller, COMPTROLLER).

10. The COUNCIL program involves training potential home purchasers, acquiring homes from the United States Department of Housing and Urban Development ("HUD") and rehabbing those homes (both through use of grant funds obtained from HUD), and, finally, reselling those homes to those purchasers who have completed taxpayer's COUNCIL program. Tr. pp. 12-16 (REVEREND), pp. 51-57 (testimony of taxpayer's director of operations, DIRECTOR); *see also* Taxpayer's Brief at 3-4.

11. Taxpayer sells homes to COUNCIL purchasers for 95% of their market value. Tr. pp. 24-25 (XXXXX), p. 68-69 (XXXXX).

12. During the purchaser training period, a trainee/potential purchaser resides in a COUNCIL home and makes monthly rental payments to taxpayer, pursuant to a lease-to-purchase contract between taxpayer and the purchaser. Tr. p. 22 (XXXXX).

13. After a period of approximately two to three years, during which time the potential purchaser works to build up a credit (-worthy) history while residing in a COUNCIL home, taxpayer assists the purchaser in either acquiring a conventional mortgage for the home, or assuming taxpayer's mortgage on the property. As part of the lease-to-purchase agreement, taxpayer holds a portion of a purchaser's monthly rent payments in escrow, which the purchaser subsequently uses as a down payment and/or as part of the closing costs associated with the purchaser's acquisition (or assumption) of a mortgage for the COUNCIL property. *See* Tr. p. 22 (XXXXX); Taxpayer Ex. No. 5, p. 5.

14. Taxpayer's COUNCIL program was funded through a grant from the United States Department of Housing and Urban Development ("HUD"). Taxpayer Ex. No. 8; Tr. pp. 20-24 (XXXXX).

15. Taxpayer's COUNCIL program's operating expenses are partially maintained by rental payments from potential purchasers who reside in a COUNCIL home. Taxpayer Ex. Nos. 5-8.

16. Taxpayer's home owner training program is open to all members of the public. Tr. pp. 91-94 (XXXXX).

17. Taxpayer collects $25.00 from each person who takes part in the home owner training program, which represents the fee a credit reporting company charges to conduct an individual's credit history. Tr. p. 95 (XXXXX).

18. Participants in the COUNCIL program must have an annual income of at least $18,000.00, so they are qualified to assume taxpayer's mortgage on the home acquired from HUD. Tr. pp. 98-99 (XXXXX).

19. Taxpayer receives the bulk of its funding through public or private charity. *See* Taxpayer Ex. No. 3 ('93 Audited Financial Statements) p. 10; Taxpayer Ex. No. 4 ('94 Audited Financial Statements) p. 10; Tr. pp. 33-37 (XXXXX).

20. Taxpayer has also worked on other housing and housing related projects, which include:

    * HOUSING: taxpayer acted as a consultant / developer in the development of a 100 unit senior housing project funded by HUD's § 202 Elderly Housing program. Tr. pp. 80-84 (XXXXX).

    * COOPERATIVE: taxpayer developed, through rehab, a cooperative multi-unit building in Harvey, Illinois, through grant funded by Cook County. Tr. pp. 84-88 (XXXXX).

    * HOMES: taxpayer is developing, through new construction, single family homes (to be sold to purchasers at 95% of fair market value), which construction is being funded through a grant from Cook County. Cook County will also make funds available for no-interest loans to the purchasers of these homes, for a percentage of the home's purchase price. Tr. pp. 88-90 (XXXXX).

21. Taxpayer received, and lists on its books and records as part of its current or long-term liabilities, loans from the Illinois Housing Development Authority ("IHDA"). Taxpayer Ex. No. 3 ('93 Audited Financial Statements), at 2, 6; Taxpayer Ex. No. 4 ('94 Audited Financial Statements), at 2, 7; *see also* 20 **ILCS** 3805/1 *et seq.* (1994) (statute creating IHDA).

22. The United States Internal Revenue Service has issued an Advanced Ruling Letter in which it recognizes taxpayer as being an organization exempt from paying federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code. Taxpayer Group Ex. No. 1, item 1.7.

Conclusions of Law:

Section 3-5(4) of Illinois' Use Tax Act ("UTA") provides:

> Use of the following tangible personal property is exempt from the tax imposed by this Act:
>
> Personal property purchased by a governmental body, by a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes, or by a a not-for-profit corporation, society, association, foundation, institution or organization that has no compensated officers or employees and that is organized and operated primarily for the recreation of persons 55 years of age or older. On and after July 1, 1987, however, no entity otherwise eligible for this exemption shall make tax-free purchases unless it has an active registration number issued by the Department.

35 **ILCS** 105/3-5(4). The Retailers' Occupation Tax Act's ("ROTA") counterpart to this exemption is codified at 35 **ILCS** 120/2-5(11).[2]

As a statutory provision exempting entities from taxation, § 3-5(4) of the UTA must be strictly construed against exemption, and all debatable questions should be resolved in favor of taxation. *See* People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91, 99-100, 237 N.E.2d 533 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 434, 507 N.E.2d 141, 144 (1st Dist. 1987). Taxpayer's request that the Department recognize it as an exclusively charitable organization, and the evidence adduced at hearing, must be viewed in that light.

The regulatory basis for the Department's denial of taxpayer's application is clear from a review of its February 9th, 1995 letter to taxpayer, in which it stated:

> Organizations that do not qualify as exclusively charitable are those that derive funds largely from members and have as their main purpose the protection and advancement of the interests of the members. Examples of non-qualifying organizations would be generally: social clubs, civic clubs, professional organizations, trade associations, Chambers of Commerce, veterans associations, cultural organizations, patriotic organizations, and recreational organizations. We recognize that these non-profit organizations often sponsor charitable projects, however, dispensing charity is not their main purpose for existence.
>
> It is our understanding that the TAXPAYER operates, in part, to increase community pride and economic development in the south suburbs

[2]. A charitable exemption under the UTA allows an organization to avoid paying use tax on tangible personal property purchased at retail for use in Illinois. 35 **ILCS** 105/3-5(4); 105/3-10. The ROTA allows a retailer to deduct from its taxable gross receipts the amount it receives from purchasers of tangible personal property who provide the retailer with a proper exemption certificate. 35 **ILCS** 120/2-5(11); 86 Ill. Admin. Code § 130.2005.

> of Chicago. While these are worthwhile endeavors, they are considered to be civic in nature and civic organizations are specifically precluded under 86 Ill. Adm. Code 130.2005 from being considered exclusively charitable. This is true even though some charitable activities are conducted by the organization.

Department Ex. No. 1.

The Department denied taxpayer's application because it saw taxpayer as one of the types of organization identified in section 130.2005(g) of the Department's Regulations. 86 Ill. Admin. Code § 130.2005(g) (1991).[3] Subsection 2005(g) contains an illustrative, but not exhaustive, list of organizations the Department has previously determined as not being entitled to tax-exempt status. The organizations described in that paragraph share two distinct characteristics. First, such organizations draw funds primarily from their members; and second, they exist primarily to serve the needs or interests of their members in the business world.

While a determination of an organization's exempt status must be made on a case-by-case basis, organizations sharing the characteristics described in subsection (g) would ordinarily not be able to meet the guidelines used by Illinois courts to determine whether an organization is exclusively charitable in nature. Those guidelines are as follows:

> 1. Whether the benefits taxpayer provide are for an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare, or which, in some way, reduce the burdens on government;
>
> 2. Whether taxpayer's organization has any indices of a for-profit structure, such as capital, stock, or shareholders;
>
> 3. Whether taxpayer derives its funds mainly from private and public charity, with the funds held in trust for the objects and purposes expressed in taxpayer's corporate charter;

---

[3]. Section 130.2005(g) provides:

> Nonprofit Bar Associations, Medical Associations, Lions Clubs, Rotary Clubs, Chambers of Commerce and other professional, trade or business associations and labor unions, which draw their funds largely from their own members, and as to which an important purpose is to protect and advance the interests of their members in the business world, are not organized and operated exclusively for charitable or educational purposes, even though such organizations may engage in some charitable and educational work. The same conclusion applies to the American Legion, Veterans of Foreign Wars, Amvets, the Daughters of the American Revolution and other similar nonprofit patriotic organizations.

86 Ill. Admin. Code § 130.2005(g).

> 4. Whether the charity is dispensed to all who need and apply for it, without providing gain or profit in a private sense to anyone connected with taxpayer;
>
> 5. Whether taxpayer places any obstacles in the way of those seeking benefits from it; and
>
> 6. Whether taxpayer is exclusively operated for charitable purposes.

Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 156-57, 233 N.E.2d 537 (1968); Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 459-60, 654 N.E.2d 608 (1st Dist. 1995).

Courts consider and balance the Methodist Old Peoples Home guidelines by examining the facts of each case, and by focusing on whether and how the institution serves the public interest and lessens the State burden. DuPage Co. Bd. of Rev. v. Joint Comm'n. on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 469, 654 N.E.2d 240, 245 (2d Dist. 1995). Taxpayer asserts that it satisfies each of these criteria (*see* Taxpayer's Brief at 6), and argues that the Department should therefore grant its exemption request.

Before detailing my conclusions regarding taxpayer's argument that it satisfies the Methodist Old Peoples Home guidelines, I first acknowledge that taxpayer presented sufficient evidence to show that it does not share both characteristics of the organizations identified in § 2005(g). Taxpayer's members consist of area churches. Taxpayer does not draw its funds largely from those churches. Instead, taxpayer's start-up funding came primarily from public grants, including a loan from the Illinois Housing Development Authority. Taxpayer Ex. Nos. 3 & 4, at 3.

With respect to the first guideline, taxpayer's home-owner training program and credit counseling services are open to everyone. Tr. pp. 91-95. In action, taxpayer's programs benefit the whole area of the south Chicago suburbs. Those programs benefit the public by helping to reduce the State's voluntarily undertaken burden to encourage, assist, and partially fund the rehabilitation, for rental and purchase, of decent, safe and sanitary residential housing for persons having low and moderate income. *See, e.g.,* 20 **ILCS** 3805/3 (1994) (Illinois Housing Development Act created the IHDA, a State agency empowered to make loans of State funds "for the acquisition, construction and rehabilitation of housing, community facilities and housing related commercial facilities, acquire and develop land for large-scale planned developments and new communities and, as a means of encouraging home ownership, [and to] make loans to and purchase residential mortgages from private lending institutions."); 310 **ILCS** 65/4 (1994) (Illinois Affordable Housing Program "created for the purpose of developing and coordinating public and private resources targeted to meet the affordable housing needs of low-income and very-low-income households in the State of Illinois."); 310 **ILCS** 55/1 *et seq.* (1994) (Home Ownership Made Easy Act enacted "to help make the dream of home ownership a reality for more of the State's citizens.");[4] Tr. pp. 12-16 (REVEREND describing the effect the closing of the steel mills had on the ability of area residents to afford safe, decent housing).

Taxpayer also tendered data regarding the real property taxes realized because of its programs. *See* Taxpayer Ex. Nos. 11, 12. Taxpayer's COUNCIL program put hundreds of properties back on the property tax rolls after taxpayer purchased the properties from HUD. *See* 35 **ILCS** 200/15-50 (1994) (pursuant to the Property Tax Code, all properties owned by the United States are exempt from local taxation, except those properties the U.S. permits to be taxed); Taxpayer Ex. No. 11. Taxpayer's acquisition of those HUD properties resulted in over two million dollars in property taxes being paid to the local county assessor. Taxpayer Ex. No. 12. While the State has no duty to attempt to increase the amount of taxpayers in an area, the neighboring property owners/taxpayers, will certainly realize a proportionately reduced property tax burden as a result of taxpayer's COUNCIL program.

In sum, I conclude that taxpayer has shown that its programs benefit the public generally, by helping to reduce the State's voluntarily undertaken burden to stimulate the development, construction, rehabilitation of safe decent affordable housing for rental or purchase by persons having low or moderate income. Taxpayer has, therefore, shown that it satisfies the first Methodist Old Peoples Home guideline. Taxpayer has no capital, stock, or shareholders, and it also satisfies the second guideline. *See* Taxpayer Group Ex. No. 1, item 1.6 (By-Laws). Taxpayer similarly satisfies the third guideline because it is funded primarily through public

---

[4]. The Home Ownership Made Easy Act's Declaration of Purpose section additionally provides:

> The General Assembly recognizes that increasing owner-occupied housing has many benefits for the communities in the State, and that owning one's home is a worthwhile goal for many of this State's citizens and a goal which the General Assembly wishes to help many of this State's citizens attain. It is the intent of this Act to provide to potential purchasers of homes in Illinois a method of accumulating, over a period of years, funds sufficient to make a down payment on a home which those persons would otherwise be unable to purchase and to encourage employer assistance in achieving home ownership for their employers.

310 **ILCS** 55/2.

and private charity, which funds are, the documentary evidence shows, held in trust and actually used to accomplish taxpayer's stated corporate purposes.

With regard the fourth and fifth guidelines, some of taxpayers programs are open to all members of the public. Participants in taxpayer's COUNCIL program, however, must earn a certain minimum salary, and they must pay a credit investigation fee, which taxpayer is charged by a credit reporting agency. Despite these economic restrictions on those who may realize benefits from that particular program, there was no evidence introduced which would indicate that taxpayer placed obstacles before those who meet the program's criteria. Additionally, Department regulations provide that there may be restrictions on the persons or group to be benefitted, if the services provided to those eligible for benefits in some way relieve the public of a duty owed to the beneficiaries, or which services, in some way, benefit the public. 86 Ill. Admin. Code § 130.2005(i)(2). I have already concluded that taxpayer's programs benefit the public by reducing a State burden. Moreover, persons meeting the financial criteria necessary to take part in taxpayer's COUNCIL program are precisely the population the general assembly sought to assist through the enactment of the various housing-related statutes previously identified in this recommendation. *See* 20 **ILCS** 3805/1 *et seq.* (1994) (Illinois Housing Development Act); 310 **ILCS** 65/1 *et seq.* (1994) (Illinois Affordable Housing Act); 310 **ILCS** 55/1 *et seq.* (1994) (Home Ownership Made Easy Act).

There was, also, no evidence introduced suggesting that anyone associated with taxpayer personally profited as a result of its association with taxpayer. *See* DuPage Co. Bd. of Rev. v. Joint Comm'n. on Accreditation of Healthcare Organizations, 274 Ill. App. 3d at 470, 654 N.E.2d at 246 (rejecting the dictionary definition of "profit" in context of charitable exemption determinations). Taxpayer was required to specifically account for its use of the public funds granted, and its financial books and records detail taxpayer's use of such funds. *See* Taxpayer Ex. Nos. 3-10. Taxpayer's use of the unrestricted private grants or donations are similarly accounted for in its books and records. *See* Taxpayer Ex. Nos. 3 & 4, at 3. The documentary evidence supports my conclusion that no person associated with TAXPAYER privately profits from its operations.

As to the final guideline, the evidence shows that TAXPAYER' programs are not merely its sideline; they comprise its total operations. Taxpayer's programs are designed to assist those whose incomes allow them only the slightest opportunity to achieve what is, perhaps, the quintessential American dream. *Accord* 310 **ILCS** 55/2. Based on my review of the evidence introduced at hearing, I conclude that this taxpayer has shown that it is organized and operated as an exclusively charitable organization. I recommend, therefore, that the Department grant taxpayer a purchaser's exemption number pursuant to its application.

Date: January 11, 1996

John E. White,
Administrative Law Judge